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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/521,129 | 01/12/2005 | Suhas K. Mehra | CGL02/001 1US01 | 6817 |

38550 7590 07/16/2008

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| EXAMINER | |
|---|---|
| PUTTLITZ, KARL J | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1621 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 07/16/2008 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/521,129 | MEHRA ET AL. | |
| | Examiner | Art Unit | |
| | KARL J. PUTTLITZ | 1621 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *03 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

**DETAILED ACTION**

The outstanding rejections are maintained and repeated below:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over each of U.S. Patent Nos. 4,384,010 to Bermudez et al. (Bermudez) or 3,615,655 to Freeman et al. (Freeman).

The rejected claims cover, inter alia, a method for processing a cereal material comprising providing a cereal material, and continuously and simultaneously both having solvent absorbed by the cereal material and abrading the cereal material for a period of at least about 1 minute.

Bermudez teaches a process for grinding cereal grains, said method comprising grinding the cereal grain in the presence of an aqueous grinding medium and an amount of a hygroscopic polyhydric alcohol sufficient to increase grinding efficiency. See column 1, lines 47+. Representative examples of cereals having such edible grain are wheat, e.g., hard red spring or winter wheat, durum wheat, white wheat and mixed wheat; barley; corn, e.g., yellow, white or mixed corn of the dent or flint type; oats; rice; rye, sorghum; and the like. Cereal grains preferred in the practice of this invention are

corn and wheat; with corn, particularly a mixture of white corn and yellow corn, being most preferred. See column 2, lines 13+.

Likewise, Freeman teaches steps of rupturing the cells of a cereal germ, abrading the ruptured germ to free protein particles which adhere to the ruptured germ and separating the thus freed protein particles from the remainder of the ruptured germ cell fragments. For best results, this step should be carried out when the already ruptured germ is in a liquid slurry form. As an example, spent cereal germ such as spent corn germ may be slurried up in water and subjected to an impact mill to free the proteinaceous material. See column 3, lines 54+.

The difference between the process set forth in the rejected claims and the process disclosed by the applied patents is that the patents fail to explicitly teach having solvent absorbed by the cereal material. However of ordinary skill would expect that solvent would be invariably absorbed by the cereal material, when present, as in the process of the applied patents. Therefore, this aspect of the claimed invention is prima facie obvious.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bermudez and Freeman in view of Starch in Kirk Othmer Encyclopedia of Chemical Technology Copyright © 1997 by John Wiley & Sons, Inc. Article Online Posting Date: December 4, 2000 (Kirk Othmer).

Claims 12 and 13 cover those embodiments of separating germ, fiber and protein from processed cereal material to provide a starch containing stream, and wherein the

starch containing stream is hydrolyzed. Bermudez and Freeman fail to explicitly teach these embodiments. However, it is for this proposition that the examiner joins Cook and Kirk Othmer.

Specifically, Cook teaches that starch is hydrolyzed to release useable sugars and oligosaccharides, see page 5, for example. Therefore, it would have been within the purview of those of ordinary skill to separate starch and further hydrolyze the starch to recover usuable compounds. Therefore, the embodiments of separating germ, fiber and protein from processed cereal material to provide a starch containing stream, and wherein the starch containing stream is hydrolyzed are prima facie obvious.

Applicant argues that the cited references do not include abrading, i.e., scraping. However, there is no evidence or reason of record showing that the process of the references do not also scrape the cereal material. Infact Freeman teaches abrading, see rejection.

The double patenting rejection remains pending:

***Double Patenting***

Claims 1, 8, 9 and 11are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim13 of copending Application No. 10/521050 Although the conflicting claims are not identical, they are not patentably distinct from each other because the conflicting claim also recites the grinding or abrading of cereals and treatment with solvents or solutions. The difference

between the process set forth in the rejected claims and the process recited by the conflicting claim is that the claim fail to explicitly teach having solvent absorbed by the cereal material. However of ordinary skill would expect that solvent would be invariably absorbed by the cereal material, when present, as in the process of the applied patents. Therefore, this aspect of the claimed invention is prima facie obvious

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl J. Puttlitz whose telephone number is (571) 272-0645. The examiner can normally be reached on Monday to Friday from 9 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached at telephone number (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karl J. Puttlitz/

Primary Examiner, Art Unit 1621